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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 **(HONORABLE DANA M. SABRAW)**

11 UNITED STATES OF AMERICA,)

Case No. 07CR3406-DMS

12 Plaintiff,)

13 v.)

STATEMENT OF FACTS AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S MOTION

14 PETER MICHAEL MARTIN,)

15 Defendant.)

16
17 **I.**

18 **PRELIMINARY STATEMENT**

19 Defendant, Peter Michael Martin, respectfully submits this motion for bail pending sentencing
20 pursuant to Fed. R. Crim. P. 46(c) and pursuant to 18 U.S.C. § 3143(a).

21 **II.**

22 **BACKGROUND**

23 On December 19, 2007, an indictment was filed charging Mr. Martin with bringing in illegal aliens
24 without presentation and for financial gain, a violation of 8 U.S.C. § 1324(a)(92)(B)(ii) and (iii). Mr. Martin
25 was arrested on December 9, 2007 and was immediately taken into custody.

26 On December 10, 2007 a bond hearing was conducted before the Honorable Barbara L. Major. In
27 support of the bond request, Mr. Martin's counsel noted Mr. Martin's background and characteristics. He is
28 a 21 year old United States citizen. Mr. Martin has lived his entire life in San Diego, save for a year he

1 studied at the Long Beach State University in Long Beach, California. Mr. Martin was raised by his parents
 2 in Encinitas, California, the place of the Martins' permanent home. Mr. Martin's parents continue to reside
 3 in the home of his childhood along with his two younger brothers. Following this hearing, the magistrate
 4 court set a bond in the amount of \$20,000.00.

5 The government extended Mr. Martin a fast-track offer to plead guilty. Mr. Martin expressed his
 6 willingness to immediately take responsibility for having committed this offense and plead guilty to the fast-
 7 track offer. However, the fast-track offer was revoked by the government once Mr. Martin's co-defendant
 8 refused to plead. On February 13, 2008, Mr. Martin signed and sent to the government a plea agreement,
 9 pleading guilty to count 8 of the indictment, a violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2,
 10 bringing in illegal aliens without presentation and aiding and abetting. On March 11, 2008, Mr. Martin pled
 11 guilty to count 8 of the indictment before this Court.

12 Upon the completion of the plea colloquy, the Pre-Trial Services Officer, David Horton, asked this
 13 Court to issue a minute order allowing Pre-Trial Services to physically transport Mr. Martin from jail to the
 14 CRASH program, upon his release on bail pending sentencing. The government expressed its concern
 15 regarding Mr. Martin's release pending bail and this Court ordered the defense to file briefing on the standard
 16 of release on bail pending sentencing.

17 This motion follows.

18 **III.**

19 **ARGUMENT**

20 **A. Introduction**

21 Mr. Martin is entitled to bail under section 3143 (bail pending sentencing) if he can show by clear
 22 and convincing evidence that he is not likely to flee or pose a danger to the community. See 18 U.S.C.
 23 § 3143(a).

24 **B. Section 3143 Requires That Mr. Martin Be Released On Bond.**

25 **1. Mr. Martin Is Neither a Flight Risk Nor A Danger.**

26 Mr. Martin is twenty one years old. He was raised in a tight-knit family by his parents, Catherine
 27 and Gary Martin. Both of his parents have signed on as sureties in his case. Mr. Martin's father, Gary, owns
 28 a successful property management company, The TMC Management Corporation. Mr. Martin also sits on

1 the board of directors of Farmers, an insurance company. The Martins raised Mr. Martin and his two younger
 2 brothers, in Encinitas, where Mr. Martin attended school. After graduating from high school, Mr. Martin was
 3 admitted to and began his studies at Long Beach State University. Mr. Martin has every intention of finishing
 4 his studies, once he addresses the consequences of this offense.

5 Once released on bail, Mr. Martin will be transported directly by Pre-Trial Services to the CRASH
 6 program, a residential drug and alcohol treatment program, based in San Diego. The CRASH program will
 7 assist Mr. Martin in addressing his substance abuse problems. The program is closely monitored by Pre-Trial
 8 Services. During the first 30 days of Mr. Martin's stay at the program, he will not be allowed to leave the
 9 facility or speak to anyone outside of the program (other than his attorney and the Pre-Trial Services officer),
 10 including his family. The CRASH program's short-term program is three months long.

11 Mr. Martin needs to begin the 12-step alcohol and substance abuse treatment program as soon as
 12 possible. Once released on bail, Mr. Martin will enter a secure residential facility and will be closely
 13 monitored by the Court, through Pre-Trial Services. Pre-Trial Services (PTS) submitted a bail report to
 14 Magistrate Judge Major at the time of Mr. Martin's arraignment. At that time PTS represented to the Court
 15 that a bail was appropriate in Mr. Martin's case. Mr. Martin has always been willing to accept responsibility
 16 for his actions in this offense and plead guilty. He was not able to take advantage of the fast-track program
 17 because of his co-defendant's unwillingness to plead guilty. He has already served four months in custody.
 18 He recognizes that he may have more time yet to serve depending on this Court's decision on the day of his
 19 sentencing. However, both Mr. Martin and his parents believe that addressing his alcohol abuse as soon as
 20 possible will immensely behoove him in the long term. He has accepted responsibility and will continue to
 21 pay the consequences of his actions. But Mr. Martin is a young man who needs this Court's help and guidance.
 22 He is not and never has been a flight risk nor a danger to the community. Mr. Martin asks that this Court
 23 make this finding and order his release on bail pending sentencing.

24 **C. Mr. Martin Should Be Granted Bail Pending Appeal**

25 If the defendant has met his burden of proving each of section 3143's factors, then "the judicial
 26 officer **shall** order the release of the person in accordance with section 3142(b) or (c)." 18 U.S.C. §
 27 3143(a)(1) (emphasis added). To hold that a defendant could be denied bail even though he has met these
 28 conditions would be arbitrary and capricious and would deprive the defendant of his constitutional rights to

1 due process guaranteed by the Fifth and Eighth Amendments.

2 **D. It Is Not Uncommon For Persons In This District To Be Released Pending Sentencing**

3 Mr. Martin brings to this Court's attention other cases in this district wherein this Court and others
4 have ordered defendants released on bail pending sentencing after having tendered guilty pleas. In United
5 States v. Perry, 07cr2330-DMS, the defendant, a repeat offender with violent prior convictions, pled guilty
6 on September 11, 2007 and posted a personal appearance bond on November 2, 2007. In United States v.
7 Bliss, 08cr524-LAB, the defendant pled guilty on March 11, 2008 and posted a personal appearance bond in
8 the amount of \$35,000 on March 27, 2008. In United States v. Ruiz, 06cr2619, the defendant pled guilty on
9 January 25, 2007 and posted a personal appearance bond in the amount of \$25,000 three months later on April
10 6, 2007. In United States v. Baca, 07cr1606, the defendant pled guilty on September 18, 2007 and posted a
11 personal appearance bond in the amount of \$25,000 on November 21, 2007.

12 **IV.**

13 **CONCLUSION**

14 Because Mr. Martin has satisfied the section 3143 test, he respectfully requests that the Court grant
15 his motion for bail pending appeal.

16 Respectfully submitted,

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18 /s/ Shaffy Moeel
19 **SHAFFY MOEEL**
20 FEDERAL DEFENDERS OF SAN DIEGO INC.
21 Attorney for Mr. Martin
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Dated: April 2, 2008